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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/830,918 | 08/13/2001 | Claudia Panzer | H-3630-PCT/U | 5279 |

23657 7590 11/19/2002

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EXAMINER

JIANG, SHAOJIA A

ART UNIT PAPER NUMBER

1617

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/830,918

Applicant(s)

PANZER ET AL.

Examiner

Shaojia A. Jiang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

This Office Action is a response to Applicant's response filed on August 26, 2002 in Paper No. 8. Currently, claims 8-27 are pending in this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wachter et al. (WO 96/16991), Yu et al. (5,547,988), and Keil et al. (5,690,924) for reasons of record stated in the Office Action dated February 26, 2002.

Applicant's remarks filed on August 26, 2002 in Paper No. 8 with respect to this rejection of claims 8-27 made under 35 U.S.C. 103(a) of record in the previous Office Action February 26, 2002 have been fully considered but are not deemed persuasive as to the nonobviousness of the claimed invention over the prior art for the following reasons.

Applicants argue that Wachter does not teach cosmetic compositions including carboxylic acids, simply discloses that among many auxiliary surfactants which may be included in the taught cosmetic compositions are "ether carboxylic acids and salts thereof". Thus, as Applicants admit, Wachter cosmetic compositions may contain

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carboxylic acids (see col.4 lines 50-52 and 61). Moreover, Wachter clearly discloses that there are two kinds of known chitosans (biopolymers), and one of them have a high degree of deacetylation and are soluble in organic acids and form low-viscosity solutions (see col.2 lines 21-25). Hence, organic acids (carboxylic acids) are known to be present with chitosans in cosmetic compositions according to Wachter.

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d 413, 208 SPQ 871 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). See MPEP 2145. In the instant case, both Yu and Keil references clearly teach the chitosan cosmetic compositions therein comprising carboxylic acids in, i.e. 2-hydroxycarboxylic acids such as DL-lactic acid in Yu's composition, and 2-pyrrolidone carboxylic acid in Keil's composition.

Applicants also assert that "there is no references to chitosan salts". However, Keil clearly discloses that "a composition for treating hair based on a polymer combination of (A) 0.01 to 40 percent by weight of a **salt**, which is formed from a chitosan ... and from 2- pyrrolidon-5-carboxylic acid.." (see Keil, col.1 lines 4-8), as Applicants admit in the remarks (the last paragraph of page 3).

Further, Applicants' arguments that no references teach that the cosmetic compositions comprising ethanol in an amount of from 70-90% by weight, have been considered but not found persuasive since chitosan cosmetic compositions comprising ethanol in an amount of 40-50% by weight are known in the art. As discussed in the previous Office Action, the optimization of amounts of ethanol from 40-50% to 70-90%

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(a well known solvent in a cosmetic composition) is considered conventional in cosmetic science, well within the skill of artisan and involving merely routine skill in the art.

Therefore, motivation to combine the teachings of the prior art cited herein to make the present invention is seen. The claimed invention is clearly obvious in view of the prior art.

Furthermore, Applicant's results in the Examples of the specification at pages 12-13 herein have been fully considered with respect to the nonobviousness and/or unexpected results of the claimed invention over the prior art but are not deemed persuasive for the reasons below. Examples provide no clear and convincing evidence of nonobviousness or unexpected results over the cited prior art since there is no comparison to the same present. Therefore, the evidence presented in specification herein is not seen to support the nonobviousness of the instant claimed invention over the prior art.

For the above stated reasons, said claims are properly rejected under 35 U.S.C. 103(a). Therefore, said rejection is adhered to.

In view of the rejections to the pending claims set forth above, no claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

Shaojia A. Jiang, Ph.D.
Patent Examiner, AU 1617
November 7, 2002


SREENI PADMANABHAN
PRIMARY EXAMINER

11/16/02